



September 24, 2014

Via ECF and Facsimile – (212) 805-7920

Honorable Shira A. Scheindlin  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1620  
New York, New York 10007

Re: *Luv n' care, Ltd. et al. v. Toys "R" Us, Inc., et al.* No. 12-00228 (SAS)

Dear Judge Scheindlin:

I am a member of the law firm of Goldberg Cohen LLP ("GC") and am counsel of record for Plaintiffs Luv n'care, Ltd. and Admar International, Inc. For the reasons set forth below, Goldberg Cohen LLP and its attorneys Lee A. Goldberg, Morris E. Cohen, Benjamin H. Graf, and Limor Wigder, hereby request leave to withdraw as counsel for Plaintiffs in this matter. A proposed order granting the request is attached hereto as Exhibit A.

### **The Appropriate Standard**

Under Local Rule 1.4, an attorney of record may withdraw from a case "upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar, and whether or not the attorney is asserting a retaining or charging lien." Leave to withdraw is particularly appropriate where there would be no prejudice to the other parties to an action. *See Battino v. Cornelia Fifth Ave., LLC*, No. 09-cv-4113(LGS), 2013 WL 4779635, at \*2 (S.D.N.Y. June 26, 2013) (finding leave to withdraw appropriate where withdrawal would not "negatively impact the timing of th[e] proceeding.").

### **The Present Application**

This case is currently stayed pending full resolution of inter partes reexamination and inter partes review proceedings of the patents at issue. With respect to U.S. Patent No. D617,465 at issue, the Patent Trial and Appeal Board's ("PTAB") inter partes review judgment is now in the initial stages of an appeal to the Federal Circuit. The parties have not yet briefed the matter, and a final resolution at the Federal Circuit is not expected for at least several months. With respect to U.S. Patent No. D634,439, which is also at issue, the PTAB has not reached a decision on the inter partes reexamination. Once a decision is rendered, in all likelihood that decision will be appealed by one of the parties to the Federal Circuit as well. Accordingly, it is believed that the stay in this matter will likely not be lifted for many months if not years.

In view of the procedural posture of this case and the likelihood of its remaining stayed for an extended period of time, the parties to this litigation will suffer no prejudice if leave to withdraw is granted. Moreover, GC's withdrawal should cause no disruption as there is ample time for Plaintiffs to find substitute counsel and for substitute counsel to familiarize themselves

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with this case while the stay is ongoing. Furthermore, Plaintiffs have recently hired an experienced litigator as intellectual property in-house counsel who is fully competent and capable of handling this litigation.

The reasons for GC's withdrawal from this matter are two-fold: 1) two of GC's four attorneys are moving to another law firm at the end of this month; and 2) due to a number of disagreements between GC and Plaintiffs over payment and billing matters, continued representation of Plaintiffs would be unreasonably difficult for GC to carry out effectively.

GC has communicated its intent to withdraw from this case to Plaintiffs and Plaintiffs informed GC that they oppose withdrawal. A copy of this letter is also being forwarded to Plaintiffs.

GC is not currently asserting a retaining or charging lien in this matter, although it reserves the right to do so in the future. Also, in the interest of disclosure, pursuant to GC's agreement with Plaintiffs, GC has a partial contingency interest in this case, and is entitled to a portion of any proceeds obtained by Plaintiffs in this matter, including a portion of any damages and of the value of any injunction that may be entered in this matter. In addition, pursuant to that agreement, any proceeds must be deposited in GC's trust account for appropriate distribution.

## **Conclusion**

For the foregoing reasons, GC and its attorneys respectfully request that the Court grant our withdrawal as counsel for Plaintiffs in this case and instruct the Docket Clerk to terminate our association with the case. We thank the Court for its attention to this matter.

Respectfully submitted,

*/s/ Lee A. Goldberg*

Lee A. Goldberg

Enclosure (Proposed Order)

cc: Adam Bialek, Esq. (via ECF)

Jura Zibas, Esq. (via ECF)

Joe D. Guerriero of Luv n' care, Ltd. and Admar International, Inc. (via email)

Hartwell P. Morse of Luv n' care Ltd. and Admar International, Inc. (via email)